Remarks

Claims 1-23 are pending and at issue in the above-identified patent application. Of the claims at issue, claims 1, 7, 14, and 19 are independent. The rejections of the claims are respectfully traversed. For at least the reasons provided below, it is respectfully submitted that all claims are in condition for allowance. Withdrawal of the rejections to the claims and allowance thereof are respectfully requested.

The Office action objected to the drawings as failing to show reference numerals 332, and 334. The specification has been amended to change reference numerals 332 and 334 to reference numerals 322 and 324, respectively. Thus, the reference numerals in the specification are now consistent with those used in the drawings. It is respectfully submitted that no new matter has been added. Withdrawal of the objection to the drawings is respectfully requested.

Claims 14 and 19 have been amended to each recite a machine readable medium storing instructions. It is respectfully submitted that the amendments to claims 14 and 19 obviate any 35 U.S.C. § 101 rejections that may have been proper. Withdrawal of the rejection of claims 14-23 under 35 U.S.C. § 101 is respectfully requested.

In the Office action, claims 1-23 were rejected as being unpatentable over Blumenau (US 6,993,581) in view of alleged admitted prior art. As explained below, the alleged admitted prior art and Blumenau are each missing at least one recitation of the pending claims. Furthermore, the fundamental differences between Blumenau and the alleged admitted prior art prohibits the combination of the same. Thus, for at least the reasons explained below, it is respectfully submitted that the Office action has failed to make a *prima facie* case of obviousness.

With regard to the deficiencies of Blumenau and the alleged admitted prior art, independent claims 1, 7, 14, and 19 recite receiving a driver request from a driver during an operation phase of firmware and subsequent identification of the driver request as violating a condition of a protocol interface. It is respectfully submitted that neither Blumenau nor the alleged admitted prior art describes or suggests such an arrangement.

Blumenau is directed to providing secure access to a computer system resource. In particular, Blumenau describes that requests to access resources from an application layer are

intercepted and modified. Importantly, per Blumenau, the requests are made by an application and made to a driver. Such requests are made in an operating system runtime environment in the computer platform. In particular, Blumenau states:

> In accordance with one illustrative embodiment of the invention, a method and apparatus is provided to enable an application program to access a raw device, even though the application program does not have system administrator privileges, and <u>executes on a computer system including an O/S</u> that typically requires system administrator privileges to access a raw device.

> Blumenau, 7:20-26, emphasis added.

There are at least two deficiencies in Blumenau: Blumenau addresses an application making a request for use of a driver (as opposed to the claim recitation of receiving a request "from a driver") and does not determine if the driver request violates a protocol interface condition. Additionally, Blumenau states that its system works in the an operating system runtime environment (as opposed to the claim recitation of "during an operation phase of firmware").

At least one of these deficiencies is not cured by the alleged admitted prior art. While known systems have drivers that make requests of protocol interfaces, known systems do not receive requests and subsequently identify a driver request as violating a condition of a protocol interface, nor does the alleged admitted prior art state that known systems do so.

Thus, based at least on the foregoing deficiencies of Blumenau and the alleged admitted prior art, it is respectfully submitted that all pending claims are in condition for allowance because no *prima facie* case has been made. However, the foregoing analysis addresses a rejection based on a combination for which there is no motivation.

As noted above, Blumenau is directed to an operating system runtime system in which applications make requests of drivers. It is respectfully submitted that one having ordinary skill in the art at the time of the invention would not have been motivated to look to Blumenau to address any issue related to drivers making requests to protocol interfaces in a pre-operating system environment. In particular, the operations carried out in Blumenau are performed at a higher level in the computer architecture than those recited in the pending claims. One of ordinary skill in the art would have understood that the relatively rich functionality provided by an operating system is very different from the pre-operating system

environment in which drivers are requesting protocol interface resources. Thus, it is respectfully submitted that one having ordinary skill in the art would not have looked to operating system runtime solutions to address pre-operating system issues. Thus, for this rationale alone, it is respectfully submitted that there is no motivation for the combination of Blumenau and the alleged admitted prior art and, thus, a *prima facie* case of obviousness has not been made.

Furthermore, it is well settled that if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA 1959) (The court reversed a rejection holding the "suggested combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate." 270 F.2d at 813, 123 USPQ at 352.).

The rejection at hand is directly analogous to that in the case of In re Ratti. The present Office action premises a rejection on Blumenau, which operates in an operating system runtime environment to service requests made to a driver by an application. After establishing Blumenau as the primary reference, the Office action, in direct contradiction to the law in In re Ratti, states that it would be obvious to change Blumenau to service requests made by a driver in a pre-operating system environment. As stated above, the Blumenau system and the claimed system operate at different levels in computer architecture. Furthermore, it is respectfully submitted that there is a substantial technical difference between a pre-operating system environment and an operating system runtime environment. Thus, it is respectfully submitted that the two changes to Blumenau proposed by the Office action are not trivial and, to the contrary, amount to the "substantial reconstruction and redesign" found in In re Ratti to be insufficient to establish a *prima facie* case of obviousness. Thus, for at least this reason, it is respectfully submitted that the Office action has failed to make a *prima facie* case of obviousness.

For at least the foregoing reasons, it is respectfully submitted that all claims are in condition for allowance.

The applicants further note that claims 2, 3, and 6 were cursorily rejected for "the same reasons as claim 1." However, claims 2, 3, and 6, necessarily include recitations different from those of claim 1. The Office action does not indicate where in the prior art the recitations of claims 2, 3, and 6 may be found, or the motivation for making any required modifications or combinations. The applicants respectfully submit that the cursory rejection of these claims has unfairly deprived the applicants from a chance to fully consider and respond to such rejections. It is respectfully requested that the Office action is deficient for these reasons and, should the claims not be allowed, a second non-final Office action should be issued that fully articulates rejections of at least claims 2, 3, and 6.

If there is any matter that the examiner would like to discuss, the examiner is invited to contact the undersigned representative at the telephone number set forth below.

Respectfully submitted,

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